IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

TESTAMENTARY PETITION NO.253 OF 2006

Manohar Harishchandra Jalgaonkar ..Deceased.

Ramesh Harishchandra Jalgaonkar ..Petitioner.

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Mr. Sandip Ghogare for the Petitioner.
None present for the Respondent.

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WITH

TESTAMENTARY PETITION NO.637 OF 2006

Manohar Harishchandra Jalgaonkar ..Deceased.

Priya Manohar Jalgaonkar ..Petitioner.

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None present for the parties.

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WITH

TESTAMENTARY PETITION NO.266 OF 2008

Manohar Harishchandra Jalgaonkar ..Deceased.

Ramesh Harishchandra Jalgaonkar ..Petitioner.

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Mr. S.P. Kashid for the Petitioner.
None for the Respondent.

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CORAM : DR. D.Y. CHANDRACHUD, J.

25th September, 2009.

P.C. :

A petition for the grant of a succession certificate in respect of certain debts belonging to the deceased Manohar H. Jalgaonkar was filed by Ramesh H. Jalgaonkar claiming to be the brother of the deceased and stating that the deceased had died as a bachelor. The petition was not contested. A succession certificate was issued in favour of the Petitioner on 29th December, 2006. By the time that the succession certificate was issued T.P. 637 of 2006 had already been instituted before this Court in the month of June 2006 by Smt. Priya M. Jalgaonkar claiming to be the widow of the deceased and stating that the deceased had died without leaving behind him any children. The petition is pending. A third petition T.P. 266 of 2008 was filed for letters of administration of the property and credits of the deceased by Ramesh H. Jalgaonkar who had also instituted the first testamentary petition viz. T.P. 253 of 2006. The second and third petitions are pending. On 27th February, 2009 T.P. 637 of 2006 was moved before the Court on the application of advocate for the Petitioner in T.P. 637 of 2006. At that stage, the advocate for the Petitioner in T.P. 266 of 2008 submitted before the Court that with regard

to the debts which form the subject matter of T.P. 637 of 006, the Petitioner Ramesh Jalgaonkar had already obtained a succession certificate on 29th December, 2006. Consequently, it was submitted that the Petitioner in T.P. 637 of 206 – Priya M. Jalgaonkar – would not be entitled to a succession certificate. The advocate appearing on behalf of Priya Jalgaonkar stated that she was unaware of the succession certificate having been issued. The Court directed the advocate for the Petitioner in T.P. 266 of 2008 to forward a copy of the succession certificate obtained by his client to Priya Jalgaonkar and directed the office to proceed with the petition in accordance with the law.

All the petitions concern the estate of one deceased person. There are rival claims by two persons the first, who claims to be the brother of the deceased and the second, who claims to be the widow of the deceased. Rule 407 of the Bombay High Court (Original Side) Rules provides that when two or more petitions have been filed for the grant of a succession certificate, the petitions shall be placed on the Board of the Judge in Chambers by the

Prothonotary and Senior Master. At the hearing of the Petition, the Judge in chambers is empowered to make such orders as he deems fit. The reason for the provision contained in Rule 407 is clear. When two or more petitions are filed for the grant of a succession certificate relating to the estate of the same deceased person, it is necessary for the Court to decide all the claims together and to determine as to who would be entitled to the grant of a succession certificate. Evidently when a succession certificate was issued in favour of the Petitioner in T.P. 253 of 2006 on 29th December, 2006 a petition had already been filed in the registry by Priya Jalgaonkar, T.P. 637 of 2006. In that view of the matter, it was only necessary and proper in compliance with Rule 407 that T.P. 253 of 2006 and TP 637 of 2006 should have been placed before the Judge in Chambers at one and the same time. This was evidently not done. The Petitioner in T.P. 253 of 2006 has now filed another petition T.P. 266 of 2008 for the grant of letters of administration. Having regard to the salutary provisions contained in Rule 407, it would be necessary for the Court to determine as to who among the rival claimants is entitled to the grant of a succession certificate. In the meantime, the succession

certificate which was issued in favour of the Petitioner in T.P. 253 of 2006 on 29th December, 2006 shall be held in abeyance. There shall be an order accordingly. The registry is directed to list T.P. 253 of 2006, T.P. 637 of 2006 and T.P. 266 of 2008 together on 16th October, 2009. The rival contentions of the parties shall, it is needless to add, be considered on merits at the hearing.

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